2007

State of Utah v. Angel Jesus Hernandez : Brief of Appellee

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH,	:	
Plaintiff/Appellee,	:	
v.	:	
ANGEL JESUS HERNANDEZ,	:	Case No. 20070698-CA
Defendant/Appellant.	:	

BRIEF OF APPELLEE

APPEAL FROM CONVICTIONS FOR PURCHASE, TRANSFER, POSSESSION OR USE OF A FIREARM BY RESTRICTED PERSON, A THIRD DEGREE FELONY, CARRYING A CONCEALED DANGEROUS WEAPON, A CLASS A MISDEMEANOR, AND FALSE PERSONAL INFORMATION TO A PEACE OFFICER, A CLASS C MISDEMEANOR, IN THE SECOND JUDICIAL DISTRICT COURT, WEBER COUNTY, UTAH, THE HONORABLE ROGER S. DUTSON PRESIDING

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BRIEF OF APPELLEE

JURISDICTION AND NATURE OF PROCEEDINGS

This is an appeal from convictions for purchase, transfer, possession or use of a firearm by restricted person, a third degree felony, carrying a concealed dangerous weapon, a class A misdemeanor, and false personal information to a peace officer, a class C misdemeanor. This Court has jurisdiction under UTAH CODE § 78A-4-103(2)(e) (2008).

STATEMENT OF THE ISSUE AND STANDARD OF REVIEW

1. In the trial court, the State did not dispute defendant's claim that the officer's reliance on the safety belt statute was an invalid basis for arresting defendant. Rather, the State argued that defendant's arrest was justified because there was objective probable cause to believe he had committed another offense: interference with an officer. The trial court denied defendant's motion to suppress without explanation.

Is defendant entitled to reversal of his jury convictions where he attacks only the ground abandoned by the prosecutor and not the apparent basis for the trial court's ruling denying his motion to suppress?

Since defendant does not challenge the apparent basis for the trial court's ruling denying his motion to suppress, no standard of review applies.

2. In the trial court, the prosecutor did not dispute that criminal judgements in Utah must be signed by a judge, or that the California minute entry reflecting defendant's prior felony conviction here was not signed by a judge. Rather, the prosecutor argued that California authorizes court clerks to enter criminal judgments in the record and the minute entry, which was entered, signed, and certified by a California court clerk, thus comported with California law. Therefore, the prosecutor argued that the minute entry was valid under the Full Faith and Credit clause, and thus admissible to prove defendant's felony status. The trial court agreed.

Is defendant entitled to a reversal of his conviction for possession of a dangerous weapon by a restricted person where he asserts only that the California judgment is not signed by a judge, and does not acknowledge or attack the basis for the trial court's ruling?

Since defendant does not challenge the basis for the trial court's ruling admitting his prior felony conviction, no standard of review applies.

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

Utah R. App. P. 24(a)(9):

> An argument. The argument shall contain the contentions and reasons of the appellant with respect to the issues presented, including the grounds for reviewing any issue not preserved in the trial court, with citations to the authorities, statutes, and parts of the record relied on. A party challenging a fact finding must first marshal all record evidence that supports the challenged finding. . . .

STATEMENT OF THE CASE

Charge. Defendant was charged with purchase, transfer, possession or use of a firearm by restricted person, a third degree felony, in violation of UTAH CODE ANN. § 76-10-503(3)(a) (West 2004); carrying a concealed dangerous weapon, a class A misdemeanor, in violation of UTAH CODE ANN. § 76-10-504(1)(b) (West 2004 & Supp. 2007-2008); and false personal information to a peace officer, a class C misdemeanor, in violation of UTAH CODE ANN. § 76-8-507(1) (West 2004). R1-2.

Motion to suppress denied. Defendant, a passenger in a vehicle stopped for a routine traffic violation, moved to suppress a firearm seized during a warrantless search incident to his arrest for a safety belt violation. R49-51. The prosecutor did not dispute that the safety belt violation was an invalid basis for the arrest. R68 ("Defense counsel is correct in his reading of the seatbelt statute in that it must be enforced as secondary action to the detention of the passenger himself") (a copy of the State's Response to Defendant's Motion to Suppress is contained in **addendum** A). Rather, the State argued that defendant's arrest was justified because there was objective probable cause to believe he had committed another

offense: interference with an officer. *Id.*; *see also id.* at 66-67 (discussing UTAH CODE ANN. § 76-8-305(3) (West 2004) and *Devenpeck v. Alford*, 543 U.S. 146 (2004)). The trial court was initially uncertain about the prosecutor's argument: "I'm not quite sure I buy that. I've got to review the cases on that one. And I'll render a decision hopefully this coming week." R239:33. Pictures of the firearm were subsequently admitted at the jury trial. *See id.* at 115-121; *see also* State Exh. ## 1-2.

Motion in limine granted. To convict defendant for being a restricted person in possession of a firearm the prosecutor had to prove that defendant had a prior felony conviction. *See* § 76-10-503(3)(a). Accordingly, the prosecutor moved the trial court to admit a minute entry reflecting defendant's November 1997 felony drug conviction, which was signed and certified by a deputy clerk of the Superior Court of California, Los Angeles County. *See* R88-96 (a copy of the State's Motion in Limine (minus attached exhibits) is contained in **addendum B**); *see also* State Exh. # 8 (a copy is contained in **addendum D**). The prosecutor acknowledged that the California minute entry did not comport with Utah law, which requires trial courts to enter final judgment. R91. The prosecutor argued, however, that the minute entry did comport with California law, which allowed "a document for a final judgment of a conviction [to] be certified by the clerk of the court, or by the judge." *Id.* (discussing Cal. Penal Code § 1207 (West 2005), and *People v. Cuandra*, 225 Cal. App. 2d 728, 731 (Cal. Ct. App. 1964)). The prosecutor thus asked the trial court to admit the California judgment, which he argued was entitled to full faith and credit under U.S. CONST. Article IV, § 1, and 28 U.S.C. § 1738. R93-95.

The parties orally argued the motion in limine. *See* R239:33-45 (the pertinent transcript pages are contained in **addendum C**). Upon questioning from the trial court, the prosecutor explained that California courts "enter judgments in the minutes." *Id.* at 35. Specifically, "they use a minute entry or docket entry, [and] certify that with the signature of the clerk." *Id.* Defense counsel disputed that the certified minute entry was a judgment of a conviction, and that a judgment of conviction had in fact been "entered in the minutes" as required by California law. *Id.* at 36-39. The trial court agreed with the prosecutor, however, and admitted the California judgment "as a satisfaction of the prior conviction requirement." *Id.* at 40. The trial court found that the minute entry had "been entered in the minutes" and "certified by a clerk of the court," and thus concluded that it complied with California law. *Id.*; *see also id.* at 42 (". . . I am of the opinion that legally, this satisfies the entry by the clerk in the minutes with a brief statement of the offense for which conviction was had. And it has been certified as the official court record which I have to state is done by clerks. You know, that's the only way court records are normally made except by a clerk of a judge"). Thus, the trial court accorded the California judgment full faith and credit. *Id.* at 40 ("I will give full faith and credit—").

Conviction. Defendant was convicted by a jury as charged. R208-210.

Sentence. The trial court imposed an indeterminate term of zero to five years for the third degree felony, and concurrent terms of 365 days in jail for the class A misdemeanor, and 90 days in jail for the class C misdemeanor. R226-227.

Notice of appeal. Defendant filed a timely notice of appeal. R232.

STATEMENT OF THE FACTS

Officer Hammond of the Ogden City Police Department stopped a truck for having no license plate light. R239:5-6. As Officer Hammond spoke with the driver, defendant, the front seat passenger, interrupted with questions about the stop. *Id.* at 7, 17. Officer Hammond explained to defendant that he needed to speak with the driver, but defendant persisted in questioning the validity of the traffic stop, becoming "confrontational and argumentative." *Id.* at 102. Eventually, Officer Hammond found it impossible to conduct his investigation "over the voicetures [sic] or vulgarities . . . of the defendant." *Id.* at 19. When defendant began cursing and using vulgarity, the officer asked him for his identification. *Id.* at 7-8.

Defendant claimed he did not have any identification, but said he was from California. *Id.* at 8-9. Officer Hammond then asked defendant for his name and date of birth. *Id.* at 8. Defendant said his name was Jesus Hernandez and his date of birth was "three eighteen nineteen." *Id.* When Officer Hammond asked defendant for his social security number, defendant "stumbled through the numbers." *Id.*

After obtaining both the driver's and defendant's information, Officer Hammond returned to his patrol car to run computer checks, but he was unable to confirm defendant's information and identification. *Id.* at 9. He returned to the truck and asked defendant if he had anything with his name on it. *Id.* Defendant said that he did not. *Id.* Officer Hammond

decided to issue defendant a citation for not wearing a seat belt, but could not due to defendant's lack of identification.[1] *Id.* at 10.

At this point, Officer Hammond requested the driver to step out of the vehicle to speak with him. *Id.* While talking with the driver, the officer continued to observe defendant in the vehicle talking on a cell phone. *Id.* at 10, 20. After speaking with the driver outside the vehicle, Officer Hammond radioed dispatch for another unit to come to the scene. *Id.* at 11. The officer watched defendant as he "was leaning very close to the passenger door. And just fidgeting slightly, which was kind of increasing [his] level of awareness." *Id.* Officer Hammond began to suspect defendant was "hiding something or trying to conceal something." *Id.* at 12; *see also id.* at 109.

When another officer arrived at the scene, Officer Hammond asked defendant to step out of the vehicle. *Id.* at 11. As defendant did so, he "stayed very close to the vehicle and just kind of quickly closed the door." *Id.* at 12; *see also id.* at 110-111. Officer Hammond placed defendant in handcuffs and arrested him for not wearing a seatbelt. *Id.* at 12, 18. When the officer searched defendant incident to the arrest, he discovered a wallet with a California driver's license issued to defendant with his name listed as Angel Hernandez, date of birth 18 April 1975. *Id.* at 12-13. A computer check revealed that defendant had also given the officer a false social security number. *Id.* at 113. A search of the passenger

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[1]Officer Hammond explained at trial that the Ogden City Police Department has "a policy . . . that says that if [an officer] cannot verify [a suspect's] identity with a picture I.D., [the officer must] make an arrest," and "cannot issue a citation and set that person free." *Id.* at 108.

compartment revealed a black semi-automatic 9-millimeter handgun between the door and the passenger seat. *Id.* at 12-13; *see also id.* at 115, and State's Exh. ## 1-2. Although no round was chambered, "[t]here were eight 9-millimeter rounds inside the magazine that was inserted in the gun." *Id.* at 117.

SUMMARY OF THE ARGUMENT

Point I. Defendant challenges the trial court's ruling denying his motion to suppress the firearm, but fails to attack the apparent basis for the trial court's ruling. For example, in trial court, the prosecutor did not dispute defendant's claim that Officer Hammond's reliance on the safety belt statute as a basis for arresting defendant was invalid. Rather, the prosecutor argued that defendant's arrest was objectively justified because there was probable cause to believe he had committed another offense: interference with an officer. The trial court denied defendant's motion to suppress without explanation.

On appeal, defendant attacks only Officer Hammond's reliance on the safety belt statute, the ground abandoned by the prosecutor below. Defendant does not attack the evident basis for the court's ruling denying his motion to suppress, that his arrest was objectively justified because there was probable cause to believe that he committed the offense of interference with an officer. Consequently, defendant does not challenge the apparent basis of the trial court's ruling denying his motion to suppress. His claim is therefore inadequately briefed. This Court should thus affirm.

Point II. Defendant also challenges the trial court's admission of a certified minute entry reflecting his 1997 felony drug conviction in California, which was entered and signed

by a California court clerk. Although the certified minute entry is not signed by a judge, as would be required under Utah law, it does comport with California law, which authorizes court clerks to enter criminal judgments in the record. Therefore, the prosecutor argued that the California judgment was entitled to full faith and credit in Utah, and was thus admissible to prove defendant's felony status. The trial court agreed.

On appeal, defendant ignores the basis for the trial court's ruling admitting the California judgment—the Full Faith and Credit Clause—and continues to assert only that the minute entry does not comport with Utah law because it is not signed by a judge. Consequently, defendant's challenge to the trial court's ruling is inadequately briefed. This Court should therefore affirm.

ARGUMENT

POINT I

DEFENDANT IS NOT ENTITLED TO REVERSAL OF HIS JURY CONVICTIONS WHERE HE ATTACKS ONLY THE GROUND ABANDONED BY THE PROSECUTOR AND NOT THE EVIDENT BASIS FOR THE TRIAL COURT'S RULING DENYING HIS MOTION TO SUPPRESS THE FIREARM

In Point I of his brief, defendant challenges the trial court's denial of his motion to suppress a firearm discovered during a search incident to his arrest for a safety belt violation. Aplt. Br. at 13-19. Defendant asserts that "the officer had no authority to arrest [him] for an infraction for which there [was] no possibility of jail." Aplt. Br. at 17; *see also id.* at 18 ("In the present case the only violation for which the officer acknowledged arresting the defendant was an infraction, one not subject to arrest"). Defendant's argument overlooks that

the prosecutor did not dispute this claim below. *See* R68. Rather, the prosecutor argued that defendant's arrest—and the incident search—were objectively justified because there was probable cause to believe that he committed another offense: interference with an officer. *See* R66-67 (discussing UTAH CODE ANN. § 76-8-305 (West 2004) and *Devenpeck v. Alford*, 543 U.S. 146 (2004)); *see also* R239:25-33. The trial court denied defendant's motion to suppress the firearm without explanation. Because defendant attacks only the ground abandoned by the prosecutor and not the evident basis for the court's ruling, his challenge is inadequately briefed.

Rule 24(a)(9), Utah Rules of Appellate Procedure, requires that the argument portion of appellant's brief "shall contain the contentions and reasons of the appellant with respect to the issues presented, including the grounds for reviewing any issue not preserved in the trial court, with citations to the authorities, statutes, and parts of the record relied on."

As Utah courts have frequently reiterated, "a reviewing court is entitled to have the issues clearly defined with pertinent authority cited and is not simply a depository in which the appealing party may dump the burden of argument and research." *State v. Gomez*, 2002 UT 120, ¶ 20, 63 P.3d 72 (quoting *State v. Bishop*, 753 P.2d 439, 450 (Utah 1988) (in turn quoting *Williamson v. Opsahl*, 416 N.E.2d 783, 784 (Ill. App. Ct. 1981))). Thus, when the appellant fails to present any relevant authority, the reviewing court will "decline to find it for him." *State v. Pritchett*, 2003 UT 24, ¶ 12, 69 P.3d 1278 (rejecting prosecutorial misconduct challenge). Similarly, "[w]hen a party fails to offer any meaningful analysis, [the court will] decline to reach the merits." *State v. Garner*, 2002 UT App 234, ¶ 12, 52 P.3d

467. An appellant must, in addition to citing cases, "explain why . . . the cases cited compel this court to reverse the district court . . ." *Id.*

"Utah courts routinely decline to consider inadequately briefed arguments." *State v. Bryant*, 965 P.2d 539, 549 (Utah App. 1998) (citing *State v. Wareham*, 772 P.2d 960, 966 (Utah 1989)); *State v. Amicone*, 689 P.2d 1341, 1344 (Utah 1984); *State v. Yates*, 834 P.2d 599, 602 (Utah App. 1992); *State v. Price*, 827 P.2d 247, 249 (Utah App. 1992)). *See also State v. Norris*, 2001 UT 104, ¶ 28, 48 P.3d 872, *cert. denied*, 535 U.S. 1062 (2002); *State v. Sloan*, 2003 UT App 170, ¶ 13, 72 P.3d 138.

Where, as here, an appellant fails to attack the basis of the judgement below, his argument is inadequately briefed and the judgment should be affirmed. *Cf. State v. Sorenson*, 2004 UT App 381u, at 1(affirming where Sorenson failed to challenge two of three bases for the trial court's ruling: "Sorenson does not challenge these determinations on appeal and, accordingly, we find no reason to reverse the trial court's denial of Sorenson's motion to suppress"). *Accord San Antonio Press, Inc. v. Custom Bilt Machinery*, 852 S.W.2d 64, 65 (Tex. Ct. App. 1993) ("When a separate and independent ground that supports a judgment is not challenged on appeal, the appellate court must affirm"); *see also James v. Phoenix Gen. Hosp., Inc.* 744 P.2d 689, 694 (Ariz. 1986) (affirming judgment below on an uncontested issue); *Shrader v. Eli Lily & Co.*, 639 N.E.2d 258, 264 (Ind. 1994) (affirming judgment below "[b]ecause appellants have not successfully challenged one of the independent grounds supporting summary judgment"). Defendant attacks the ground abandoned by the prosecutor below, but makes no challenge to the apparent basis for the trial

court's ruling. *See* Aplt. Br. at 13-19. Thus, although defendant's brief contains legal authority and analysis, it wholly fails to explain why the cited authorities compel this Court to reverse the evident basis of the trial court's ruling, that there was probable cause to arrest defendant for interference with an officer. *Id.* Defendant's brief does not acknowledge or even mention the trial court's apparent rationale. *Id.* Accordingly, defendant's argument is inadequately briefed and his challenge to the trial court's denial of his motion to suppress should be rejected. *See, e.g., Norris*, 2001 UT 104, ¶ 28; *Sloan*, 2003 UT App 170, ¶ 13.

POINT II

DEFENDANT IS NOT ENTITLED TO A REVERSAL OF HIS CONVICTION FOR POSSESSION OF A DANGEROUS WEAPON BY A RESTRICTED PERSON WHERE HE FAILS TO ATTACK THE BASIS FOR THE TRIAL COURT'S RULING

In Point II of his brief, defendant challenges the admission of a prior felony conviction in the state of California to prove his restricted status under UTAH CODE ANN. § 76-10-503(3)(a) (West 2004). Aplt. Br. at 19-24. Defendant does not, however, challenge the basis for the trial court's ruling admitting the California judgment—the Full Faith and Credit Clause. Consequently, defendant's challenge to admission of his California felony conviction fails for the same his reason that his challenge to admission of his firearm failed: it is inadequately briefed. *See* Point I above.

As set out in the Statement of the Case, the trial court admitted a certified California minute entry reflecting defendant's 1997 felony conviction as proof of his restricted felony status. R239:40-42. There was no dispute below that the California minute entry was not

signed by a judge, or that Utah judgments are required to be so signed. *See* R91. The trial court found, however, that the certified minute entry comported with California law, which authorizes court clerks to enter criminal judgements, and that it was therefore entitled to full faith and credit in Utah. *See* R239:40-42.

On appeal, defendant continues to assert that Utah criminal judgements must be signed by a judge and that the California minute entry is not signed by a judge. Aplt. Br. at 19-24. While a Utah judgment of conviction that is not signed by a judge may be invalid to prove a defendant's restricted status, a Utah judgment is not at issue here. Rather, the felony judgment at issue is out of California. R239:40-42; *see also* Exh. # 8. As noted above, the trial court found that California law authorizes entry of judgment by the court clerk, *see*, R239:40-42, and defendant does not challenge that finding on appeal. Indeed, defendant does not acknowledge the basis for the trial court's ruling in his brief, and does not dispute either that the certified minute entry comports with California law, or that it must be accorded full faith and credit under the federal constitution. *See* Aplt. Br. at 19-24. Thus, although defendant's brief contains legal authority and analysis, it wholly fails to explain why the cited authorities compel this Court to reverse the trial court's ruling. *See id.*

Based on the above, and as more fully set out in Point I, where, as here, defendant fails to support his claim with relevant authority, and fails to attack the basis of the trial court's ruling, it is inadequately briefed and should be rejected. *See, e.g., Pritchett*, 2003 UT 24, ¶ 12; *Garner*, 2002 UT App 234, ¶ 12. *Cf. Sorenson*, 2004 UT App 381u, at 1. *Accord*

San Antonio Press, Inc., 852 S.W.2d at 65; *see also James*, 744 P.2d at 694; *Shrader*, 639 N.E.2d at 264.

CONCLUSION

The trial court's denial of defendant's motion to suppress should be affirmed, as should defendant's jury convictions.

RESPECTFULLY submitted on 8 April 2008.

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MAILING CERTIFICATE

I certify that on 8 April 2008, I mailed a copy of the foregoing BRIEF OF APPELLEE, postage prepaid, to the following:

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Addenda

Addendum A

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IN THE SECOND DISTRICT COURT, WEBER COUNTY, STATE OF UTAH

STATE OF UTAH, Plaintiff, vs. ANGEL JESUS HERNANDEZ Defendant.	STATE'S RESPONSE TO DEFENDANT'S MOTION TO SUPPRESS Case No. 051903167 Judge: ROGER S. DUTSON

The State objects to Defendant's Motion to Suppress and respectfully moves this Court to deny Defendant's motion. The State's argument is more fully set forth below.

FACTS

On February 14, 2005, Defendant was a passenger in an automobile stopped by Officer Kenneth Hammond of the Ogden City Police Department. Officer Hammond stopped the vehicle for not having a license plate light. As Officer Hammond was beginning to talk to the driver, the passenger, later identified as the Defendant, began to interrupt his conversation with the driver. The Defendant was questioning Officer Hammond about the validity of the stop. He than became extremely vulgar to the officer and began cursing. The Defendant kept interrupting Officer Hammond in his attempts to deal with the driver. Officer Hammond testified at the preliminary hearing that the Defendant would not let him deal with the driver. Officer Hammond told the Defendant that the purpose and validity of the stop were not his concern, but the

Defendant continued to engage the officer. Officer Hammond testified that he could not have ignored the Defendant or reasonably continued the investigation of the driver because of the Defendant's constant, vulgar interruptions. The Defendant was also not wearing a seat belt.

Officer Hammond asked for the Defendant's information. Admittedly, Officer Hammond stated that he believed he could cite the Defendant for not wearing a seat belt. Officer Hammond also testified that he felt the Defendant was interfering with his attempts to deal with the driver. The Defendant verbally gave him false information. Upon running the Defendant's information, Officer Hammond could not find anything with the information the Defendant provided. Officer Hammond returned the vehicle to ask the Defendant for identification, but the Defendant denied that he had any. Officer Hammond then arrested the Defendant for the seat belt violation.

ARGUMENT

I. OFFICER HAMMOND WAS CONSTITUTIONALLY JUSTIFIED IN REQUESTING THE DEFENDANT'S IDENTIFICATION AND EVENTUALLY ARRESTING THE DEFENDANT BECAUSE HE WAS INTERFERING WITH THE DETENTION OF THE DRIVER.

The Fourth Amendment to the U.S. Constitution states that, "[t]he right of the people to be secure in their houses, papers, and effects, against unreasonable searches and seizures, shall not be violated. . . ." U.S. CONST. amend. IV. Similarly, the Utah Constitution provides that, "The right of the people to be secure in their persons . . . against unreasonable searches and seizures shall not be violated . . . ." UTAH CONST. art. I § 14. The U.S. Constitution does not forbid all searches and seizures, but only unreasonable searches and seizures. Terry v. Ohio, 392 U.S. 1, 9 (1968). For a warrantless arrest to be reasonable under the U.S. Constitution, it must be supported by probable cause. Florida v. Royer, 460 U.S. 491, 499 (1983).

Probable cause exists when "'the facts and circumstances within [the officers'] knowledge and of which they had reasonably trustworthy information [are] sufficient in themselves to warrant a [person] of reasonable caution in the belief that' an offense has been or is being committed." State v. Dorsey, 731 P.2d 1085, 1088 (Utah 1986)(quoting Brinegar v. United States, 338 U.S. 160, 175-76 (1949)). When applying this standard it is important to note that "[t]he validity of the probable cause determination is made from the objective standpoint of a 'prudent, reasonable, cautious police officer . . . guided by his experience and training.'" Id. (quoting United States v. Davis, 458 F.2d 819, 821 (D.C. Cir. 1972). This is because "[p]olice officers by virtue of their experience and training can sometimes recognize illegal activity where ordinary citizens would not." Id. Consequently, "[d]eterminations of whether probable cause exists require a common sense assessment of the totality of the circumstances confronting the arresting . . . officer." State v. Spurgeon, 904 P.2d 220, 226 (Utah App. 1995). Finally, it is important to remember that the probable cause standard is lower than the preponderance of the evidence standard in civil cases. State v. Talbot, 972 P.2d 435, 437 (Utah 1998).

Regardless of whether the Officer stated a reason for arrest based on valid probable cause at the time of the arrest, or whether he stated another reason for arrest is irrelevant as long as valid probable cause actually did exist. The United States Supreme Court has considered whether an officer needs to identify the basis for probable cause at the time of arrest correctly, and has determined unequivocally that he does not. "A warrantless arrest by a law officer is reasonable under the Fourth Amendment if, given the facts known to the officer, there is probable cause to believe that a crime has been or is being committed. [The requirement] that the offense establishing probable cause must be 'closely related' to, and based on the same

conduct as, the offense the arresting officer identifies at the time of arrest—is inconsistent with this Court's precedent, which holds that an arresting officer's state of mind (except for facts that he knows) is irrelevant to probable cause." Devenpeck v. Alford, 543 U.S. 146, 125 S. Ct. 588, 590 (2004).

In Devenpeck, an officer pulled over the defendant motorist because he believed the defendant was impersonating a police officer. During the encounter, the officer observed that the defendant was recording the traffic stop. The officer arrested the defendant for violating Washington State's Privacy Act. Later, the district court dismissed that charge because taping a traffic stop is not a crime in Washington. The jury found that the officer nevertheless had probable cause to arrest even though taping a traffic stop was not illegal. On appeal, the Ninth Circuit ruled that the officer could not rely on the evidence that the defendant was impersonating an officer for probable cause to arrest, because the officer's stated probable cause for arrest was for taping the traffic stop, not for impersonating an officer. The United States Supreme Court reversed the Ninth Circuit. Id.

The Court explained that the critical issue was whether facts objectively existed justifying probable cause, not the officer's subjective incorporation of those facts into his stated reason for making the arrest. That is, the facts justifying probable cause simply has to exist—the officer does not have to acknowledge them at the time of the arrest. "Our cases make clear that an arresting officer's state of mind (except for the facts that he knows) is irrelevant to the existence of probable cause. That is to say, his subjective reason for making the arrest need not be the criminal offense as to which the known facts provide probable cause. As we have repeatedly explained, 'the fact that the officer does not have the state of mind which is hypothecated by the

reasons which provide the legal justification for the officer's action does not invalidate the action taken as long as the circumstances, viewed objectively, justify that action.'" Id. at 593-94 (quoting Whren v. United States, 517 U.S. 806, 812-13(1996)). Further, "'[T]he Fourth Amendment's concern with "reasonableness" allows certain actions to be taken in certain circumstances, *whatever* the subjective intent.'" Devenpeck, 125 S. Ct. at 594 (quoting Whren, 517 U.S. at 814). Finally, "'[E]venhanded law enforcement is best achieved by the application of objective standards of conduct, rather than standards that depend upon the subjective state of mind of the officer.'" Devenpeck, 125 S. Ct. at 594 (quoting Horton v. California, 496 U.S. 128, 138 (1990)).

In allowing an unstated basis for probable cause to support an arrest even when an officer identifies another, possibly invalid, basis for probable cause, the Court also considered whether the *real* probable cause and the stated probable cause had to be "closely related." That is, must the offense establishing the *real* probable cause be closely related to, and based on the same conduct as, the offense which the officer identifies at the time of arrest? The Supreme Court said no.

> Such a rule makes the lawfulness of an arrest turn upon the motivation of the arresting officer--eliminating, as validating probable cause, facts that played no part in the officer's expressed subjective reason for making the arrest, and offenses that are not "closely related" to that subjective reason. This means that the constitutionality of an arrest under a given set of known facts will "vary from place to place and from time to time," depending on whether the arresting officer states the reason for the detention and, if so, whether he correctly identifies a general class of offense for which probable cause exists. An arrest made by a knowledgeable, veteran officer would be valid, whereas an arrest made by a rookie *in precisely the same circumstances* would not. We see no reason to ascribe to the Fourth Amendment such arbitrarily variable protection.

Devenpeck, 125 S. Ct. at 594 (internal citations omitted).

Summarizing, the Court emphasized that an officer's subjective reasons for making an arrest are irrelevant where the arrest finds support in objective—though possibly different—reasons. "Subjective intent of the arresting officer, *however* it is determined (and of course subjective intent is *always* determined by objective means), is simply no basis for invalidating an arrest. Those are lawfully arrested whom the facts known to the arresting officers give probable cause to arrest." Id.

Officer Hammond's articulated basis for asking for the Defendant's information was admittedly the seat belt violation. Defense counsel is correct in his reading of the seatbelt statute in that it must be enforced as secondary action to the detention of the passenger himself. However, Officer Hammond clearly articulated and was justified in demanding the Defendant's information because the Defendant was interfering with the detention of the driver in violation of UTAH CODE ANN. § 76-8-305 as follows:

> A person is guilty of a class B misdemeanor if he has knowledge, or by the exercise of reasonable care should have knowledge, that a peace officer is seeking to effect a lawful arrest or detention of that person or another and interferes with the arrest or detention by: . . .
>
> (3) the arrested person's or another person's refusal to refrain from performing any act that would impede the arrest or detention.

UTAH CODE ANN. § 76-8-305.

In this case, the Defendant was interfering with the detention of the driver by constantly interrupting the officer and the driver. He was vulgar and swearing. He stated that the thought the traffic stop was unlawful. Officer Hammond told him that the stop was not his concern, but the Defendant continued to interrupt him and impede his ability to conduct the purpose of the stop with the driver.

Defendant Hernandez is in a similar situation to the defendant in American Fork City v. Pena-Flores. 63 P.3d 675 (Utah 2002). In Pena-Flores, the officer had stopped suspected gang members to update information and photographs. The defendant, Luis Pena-Flores, who was unknown to the officers, approached and began to tell the "detainees they did not have to go with the police, answer questions, or have their pictures taken." Id. at 677. One officer told the defendant to keep quiet and step back, but the defendant ignored these commands and he continued to verbally agitate the other people. Eventually, Pena-Flores was arrested for interfering with the peace officers seeking to effect a lawful detention. Id.

Pena-Flores appealed his conviction for interfering should be overturned because he claimed the arrest or detention of the other people were unlawful. Id. at 677-78. The Utah Supreme Court upheld his conviction stating that it "is clear that Pena-Flores' acts were impeding the detention in question." Id. at 679. The Court held the defendant was clearly violating the interfering statute for the following reasons: (1) the officers were clearly identified; (2) they were effecting a lawful detention of others; (3) the defendant was agitating others and encouraging noncompliance with the officers; (4) the defendant was told to keep quite and step back; and (5) the defendant continued to interfere with the detention. Id. at 678-79.

Similarly, Defendant Hernandez was a passenger in an automobile lawfully detained by a clearly identified and uniformed officer. The Defendant began to harass the officer verbally and obstructed his ability to continue his conversation with the driver. He challenged the legality of the stop thereby encouraging noncompliance by the driver. He was told by Officer Hammond that the stop of the driver did not concern him because he was not driving. The Defendant continued to express his extreme concerns about the stop in a very vulgar manner. Thus, the

officer clearly had probable cause to detain and arrest the Defendant for interfering with his detention of the driver.

Probable cause to arrest is an objective standard and we cannot fault Officer Hammond simply because he identified a different or ultimately illegal basis for the detention. Davenpeck, 543 U.S. at 593-94. So long as, at the time of the detention, Officer Hammond had sufficient facts within his knowledge that it would warrant a person of reasonable caution and prudence to believe that an offense was being committed, then he had probable cause to detain or arrest the Defendant. Id., see also Dorsey, 731 P.2d at 1088. Therefore, viewed objectively, Officer Hammond had probable cause to believe that the Defendant was interfering with his detention of the driver and was constitutional justified in asking the Defendant for his information.

CONCLUSION

The Court must view the question of probable cause objectively to determine whether the facts and circumstances with Officer Hammond's knowledge were reasonably trustworthy and sufficient in themselves to warrant a person of reasonable caution in the belief that' an offense was being committed. Based on these objective facts, Officer Hammond had probable cause to detain and arrest the Defendant for interfering with his detention of the driver. We cannot fault Officer Hammond for identifying a different or otherwise impermissible basis for detaining the Defendant because it is an objective standard. Therefore, the Defendant's motion is without merit and the State respectfully request this Court deny the Defendant's motion.

DATED this 17th day of May 2006.

Branden B. Miles
Deputy County Attorney

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing *State's Response to Defendant's Motion to Suppress*, was mailed, postage pre-paid, to the following:

Martin Gravis
Attorney for Defendant Angel Hernandez
2562 Washington Blvd.
Ogden, UT 84401

DATED this 17th day of May 2006.

B. R. Read

Addendum B

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IN THE SECOND JUDICIAL COURT OF WEBER COUNTY,

STATE OF UTAH, OGDEN DEPARTMENT

STATE OF UTAH, Plaintiff, v. ANGEL JESUS HERNANDEZ, Defendant.	STATE'S MOTION IN LIMINE AND MEMORANDUM IN SUPPORT THEREOF CASE No. 051903167 Judge: ROGER S. DUTSON

The State of Utah, represented by Branden B. Miles, Deputy County Attorney, respectfully requests this Court to allow the State to introduce evidence of Defendant's prior felony conviction for the manufacture of a controlled substance. The State's argument is more fully set forth below.

FACTS

On April 5, 2000, the Superior Court of the State of California for the County of Los Angeles accepted Defendant's, Angel Jesus Hernandez's, plea of guilty to the manufacture of methamphetamine, a felony punishable by prison. ATTACHED EXHIBIT. Throughout the proceeding Defendant was represented by Jeffrey Zimel, Deputy Public Defender. Defendant was advised of, and personally and explicitly waived, his constitutional rights and entered the guilty

plea knowingly, intelligently, and voluntarily. Also, Defendant was notified of a possible enhancement if convicted of a felony in the future. Def's Transcript p. 3 ¶ 13-24 April 5, 2000. Consequently, Defendant served 365 days in Los Angeles County Jail and was put on probation. ATTACHED EXHIBIT.

ARGUMENT

I. EVIDENCE CONCERNING DEFENDANT'S PRIOR BAD ACTS ARE ADMISSIBLE UNDER RULES 803(22) AND 902(4) BECAUSE THE DOCUMENTS ARE PROPERLY AUTHENTICATED WITH CERTIFICATION FROM THE COURT CLERK AND ARE PROPERLY DOCUMENTED WITH A CLEAR STATEMENT OF A FELONY CONVICTION.

Under Rule 803(22) of Utah Rules of Evidence, a judgment of previous conviction is admissible if it is (1) a final judgment after trial or upon plea of guilty; (2) adjudging a person guilty of a crime punishable by imprisonment for more than one year; and (3) proving any fact essential to sustain the judgment. U.R.E. Rule 803(22). In order to charge a person with possession of a firearm by a restricted person, as a 3rd degree felony, the defendant must have a prior felony conviction. Also, a prior felony conviction is, in itself, a final judgment after trial or upon plea of guilty. Therefore, under Rule 803(22), proof a prior felony conviction is essential to convict a person of possession of a firearm by a restricted person, after a plea of guilty or trial. Consequently, proof of a prior felony conviction is admissible evidence.

Furthermore, documentation to prove that a felony conviction had taken place must be properly authenticated to be admissible. Rule 902(4) of the Utah Rules of Evidence has three requirements for a copy of an official record to be self-authenticating: (1) a copy of an official report; (2) authorized by law to be recorded or filed and actually recorded and filed in a public office; and (3) certified as correct by the custodian of other person authorized to make the

certification. U.R.E. Rule 902(4). Therefore, an official must certify the document that refers to a felony conviction for a person to be classified as a restricted person. *State v. Higginbotham*, 917 P.2d 545, 548 (Utah 1996).

For example, in *Higginbotham*, the defendant was charged with possession of a dangerous weapon by a restricted person. *Id.* However, the court found that the two documents provided by the prosecution were inadequate to determine that the defendant had been convicted of a felony. The first document was an affidavit for a parol violation signed by a prosecuting attorney and stamped with a judge's name, without certification, and had stated that the defendant had plead guilty to a felony. The second document was a copy of a bench warrant, signed by a deputy clerk and certified by a custodian of law enforcement records, that did not state that the defendant was convicted of a felony. *Id.* at 549. Consequently, the documents failed to include both a certification by an official and a clear indication that the defendant had been convicted of a felony. *Id.*

Two other cases closely parallel the holding in *Higginbotham*. First, like *Higginbotham*, the defendant in *State v. Lamorie*, 610 P.2d 342 (Utah 1980) was charged with possession of a dangerous weapon while on parole for a felony. Copies of court records were admitted into trial after a parol agent testified that the defendant had been under his supervision, yet the records were certified only by a notary public. Appellate court reversed the conviction since the notary's certification did not constitute proper authentication. *Id.* at 343-45. Second, the defendant in *State v. Long*, 721 P.2d 483 (Utah 1986) was charged with possession of a dangerous weapon by a restricted person. Certified copies from the defendant's parole file, introduced by the defendant's parol officer, stated that the defendant had been twice convicted of felonies.

However, the documents were not properly authenticated because no evidence showed that the documents were filed and recorded in a public office. *Id.* at 484, 486.

In the state of California, a document for a final judgment of a conviction can be certified by the clerk of the court, or by the judge, to be properly filed and executed. Cal. Penal Code § 1207 (Deering 2006); see also Cal. Penal Code § 1213 (Deering 2006). California's requirements for documentation of a final judgment are different from Utah's requirements for documentation. *See State v. Anderson*, 797 P.2d 1114, 1115-16 (Utah Ct. App. 1990); *c.f.* Cal. Penal Code § 1207. In Utah, a judgment of a prior conviction must be "written, clear and definite, and signed by the court (or the clerk in a jury case) in order to serve as the basis for enhancing a penalty." *Anderson*, 797 P.2d at 1117. However, California criminal procedure for entry of judgment includes:

> When judgment upon a conviction is rendered, the clerk, or if there is no clerk, the judge, must enter the same in the minutes, stating briefly the offense for which the conviction was had, and the fact of a prior conviction, if any. A copy of the judgment of conviction shall be filed with the papers in the case.

Cal. Penal Code § 1207. In *People v. Cuadra*, 225 Cal. App. 2d 728 (Cal. Ct. App. 1964), a certified copy of a judgment, certified by the Clerk of the Court, entered in the minutes of the court with a brief history of the proceedings was upheld as a valid and final process of a criminal proceeding. 225 Cal. App. 2d at 731. Since the clerk has the duties, imposed by law, to "make and certify copy of the records and papers in his keeping, . . . his certificate may be accepted as conclusive of the facts cited therein." *Id.* Therefore, in the state of California, documentation of a judgment need only to include a statement of the offense from the clerk, without any documentation or entry from a judge. *Id.*

Here, the felony conviction necessary to charge Defendant as a restricted person was entered after a guilty plea, filed and recorded in a public place and certified by the Clerk of Superior Court, and, therefore, the minute entry should be allowed as admissible evidence. The minute entry introduced to the court conforms to California State law because the minutes are certified by the court clerk.

First, the minute entry provided by the State indicates that Defendant was convicted of a felony and is certified by a court clerk in California to comply with the laws of the state of California. Defendant has previously contended that the document is not properly certified to prove a prior conviction because a judge did not sign the minutes. However, the document is valid according to California laws because the conviction was documented to comply with California Penal Code § 1207.

Second, according to Utah Rules of Evidence Rule 803(22), the minute entry is admissible as evidence. The minute entry clearly indicates that Defendant pleaded guilty to a felony in the state of California. Furthermore, the minute entry shows that Defendant was represented by an attorney, Jeffrey Zimel, and that Defendant knowingly and voluntarily waived his Constitutional rights to a trial; therefore, the California judgment is valid. Additionally, the fact that Defendant has been convicted of a felony is essential to sustain a judgment for possession of a firearm by a restricted person. Therefore, under Utah Rules of Evidence Rule 803(22), the minute entry should be allowed into evidence.

Finally, Utah Rule of Evidence Rule 902(4) supports the admissibility of the minute entry. The minute entry is a copy of an official report that was filed in the Eastern Judicial District, County of Los Angeles, State of California on November 21, 1997. Furthermore, the entry is

certified as correct by "John A. Clarke, Executive Officer/Clerk of Superior Court, County of Los Angeles, State of California."

II. THE FULL-FAITH AND CREDIT CLAUSE OF THE U.S. CONSTITUTION AND THE FEDERAL STATUTE ALLOWS UTAH TO ACKNOWLEDGE FINAL JUDGMENTS, INCLUDING CRIMINAL CONVICTIONS, FROM FOREIGN STATES.

The Full Faith and Credit clause, Article IV, § 1 of the United States Constitution, states that "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof." U.S. Const. art. IV, §1. Congress has implemented the constitutional full faith and credit clause to include:

> Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

28 U.S.C. § 1738.

The full faith and credit clause, in either its federal constitutional or statutory incarnations, is meant to guide the courts when a question arises as to whether faith and credit is to be given by the court to the records and judicial proceedings of a state other than that in which the court is sitting. *Thompson v. Thompson*, 484 U.S. 174, 182 (1988). The general constitutional command is for every state to give to judgment at least res judicata effect to judgments which would be allotted in the state which rendered it. *Durfee v. Duke*, 375 U.S. 106, 109 (1963). Also, as a general rule, judgment is entitled to full faith and credit when the "second court's inquiry discloses that those questions have been fully and fairly litigated and finally decided in the court which rendered the original judgment." *Id.* at 111. To transform an "aggregation of independent,

sovereign State into a nation," adherence to foreign state judgments validly adjudicated is a way to try matters effectively and efficiently. *Baker v. Gen. Motors Corp.*, 522 U.S. 222, 233 (1998).

Moreover, with proper authentication on court documents, the presumption is that the court "imports absolute verity and is final and conclusive." *Idaho v. Prince*, 132 P.2d 146, 148 (Idaho 1942). Therefore, judgments are proof of what they show in their face and are the "best and only competent evidence thereof." *Id.*

To not enforce the penal judgment of a foreign state would lead to absurd results: "To say, however, that the offender is 'a new man', and 'as innocent as if he had never committed the offense', is to ignore the difference between the crime and the criminal. A person adjudged guilty of an offense is a convicted criminal . . .." *People v. Laino*, 87 P.3d 27, 34 (Cal. 2004) (citing *People v. Biggs*, 71 P.2d 214 (1937)). Therefore, this Court should allow the minute entry into evidence to show that Defendant was convicted of a felony in the state of California.

If this Court were to dismiss California state judgments because the judge does not sign the judgments, Utah laws would become enigmatic. For example, convicted Californian sex offenders would not need to register in Utah; convicted Californian murderers could legally possess weapons; or convicted Californian felons could legally possess weapons in Utah. The State would be powerless to prosecute these offenders because a lack of admissible evidence. Consequentially, the minute entry should be allowed as evidence of a prior felony conviction in accordance to both Utah and California laws.

Here, the full faith and credit clause guides this court to treat California convictions the same as Utah convictions by recognizing documents from California that facially indicate that the conviction is final and conclusive. To further the purpose of statutory and constitutional federal

law, a certified document that says Defendant was "convicted" of "count (01)" "H&S FEL - MANUFACTURE CONTROLLED SUBSTANCE" should be acknowledge as a final and conclusive conviction.

The document is competent evidence to establish a prior felony conviction. Defendant is a convicted felon. Upholding the California judgment would further Utah's legal policy of preventing felons from possessing weapons.

CONCLUSION

The minute entry is a valid document to show that Defendant is a convicted felon according to California state law and is admissible evidence according to Utah state law. Certification from the court clerk, rather than a signature from a judge, is necessary to validate the official document. Moreover, the authenticated document is valid to find that Defendant's conviction is final and conclusive. The minute entry should, therefore, be admitted into evidence.

DATED this 11th day of August 2006.

Branden B. Miles
Deputy Weber County Attorney

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing *State's Motion in Limine and Memorandum in Support Thereof*, was mailed, postage pre-paid, to the following:

Martin V. Gravis
Attorney for Defendant Angel Hernandez
2562 Washington Blvd.
Ogden, UT 84401

DATED this 14th day of August 2006.

B. L. Read

Addendum C

IN THE DISTRICT COURT OF WEBER COUNTY

STATE OF UTAH

*****

STATE OF UTAH,

PLAINTIFF,

VS.

ANGEL JESUS HERNANDEZ,

DEFENDANT.

VIDEO TRANSCRIPT

CASE NO. 051903167

*****

HONORABLE ROGER S. DUTSON

APRIL 17, 2006, PRELIMINARY HEARING

OCTOBER 2, 2006, MOTION HEARING

MAY 22, 2006, MOTION HEARING

DECEMBER 20 & 21, 2006, JURY TRIAL

*****

APPEARANCES:

FOR THE STATE: BRANDEN B. MILES

FOR THE DEFENDANT: MARTIN V. GRAVIS

*****

TRANSCRIBED BY DEAN OLSEN, CSR
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20070698-CA

Original

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ELSE. BUT AGAIN, AS THE STATE'S ARGUING, THAT DOESN'T MATTER. I'M NOT QUITE SURE I BUY THAT. I'VE GOT TO REVIEW THE CASES ON THAT ONE. AND I'LL RENDER A DECISION HOPEFULLY THIS COMING WEEK. I WON'T THIS WEEK. I'VE GOT JURY TRIAL TOMORROW AND THE NEXT DAY AND THEN JUDGES' CONFERENCE, SO --

MR. MILES: WHEN DID MR. HUTCHISON SEND HIS --

THE CLERK: JUNE 19TH.

MR. MILES: IS JUNE 19TH, DO WE WANNA PUT IT ON THAT DATE?

THE COURT: THAT'LL BE FINE.

MR. GRAVIS: ACTUALLY, LET'S PUT IT ON THE 12TH BECAUSE WE'VE GOT A -- BECAUSE WE HAVE ANOTHER SUPPRESSION HEARING ON MR. HERNANDEZ'S OTHER CASE SCHEDULED ON THE 12TH.

THE COURT: DO WE? LET'S DO IT THEN. THE 12TH OF JUNE.

MR. GRAVIS: YOUR HONOR, MR. HERNANDEZ DOES WANNA THANK YOU BECAUSE HE WAS ABLE TO GET (UNINTELLIGIBLE) RECOMMENDATION.

THE COURT: OH, GOOD. GOOD. OKAY.

*****

OGDEN, UTAH OCTOBER 2, 2006

THE COURT: ALL RIGHT. GO AHEAD WITH YOUR ARGUMENT THEN.

MR. GRAVIS: IT'S THE STATE'S MOTION.

MR. MILES: YOUR HONOR, THIS IS THE STATE'S MOTION. DO YOU HAVE BEFORE YOU THEN, AND YOU SHOULD HAVE BEFORE YOU

ATTACHED TO OUR MOTION, A COPY OF THE CERTIFIED CONVICTIONS OF THE DEFENDANT AS CONTAINED IN THE MINUTE ENTRY --

THE COURT: WELL, LET ME JUST ASK YOU A FEW QUESTIONS ABOUT IT.

MR. MILES: OKAY.

THE COURT: THE CERTIFICATION THAT YOU THINK IS SUFFICIENT IS THE ONE THAT'S SIGNED BY KATHY O'CONNELL, THE DEPUTY, RIGHT?

MR. MILES: WELL, LET ME MAKE SURE.

THE COURT: JULY 5TH OF '05. LAST PAGE OF YOUR LAST ATTACHMENT.

MR. MILES: OKAY. THERE ARE ACTUALLY TWO --

THE COURT: WELL, YOU'VE GOT --

MR. MILES: -- COPIES OF THAT --

THE COURT: -- BUT --

MR. MILES: -- AND ONE OF THEM IS ACTUALLY SIGNED --

THE COURT: -- ONE OF THEM WASN'T SIGNED.

MR. MILES: HUH?

THE COURT: ONE OF THEM WASN'T SIGNED. THE OTHER ONE WAS.

MR. MILES: LET'S SEE, THAT MAY BE RIGHT.

THE COURT: NOW, I DON'T SEE ANY STAMP OR ANY CERTIFICATION BY HER. THAT'S MY CONCERN.

MR. MILES: THE ONE THAT IS NOT SIGNED IS STAMPED WITH THE SEAL OF THE STATE OF CALIFORNIA. THAT'S THE ONE

MR. GRAVIS AND I WERE EXAMINING BEFORE (UNINTELLIGIBLE) AND THAT'S THE MINUTE ENTRY. THAT'S THE SAME COPY THAT'S NOT SIGNED (UNINTELLIGIBLE).

THE COURT: AND THAT'S SIGNED BY THE COMMITTING MAGISTRATE?

MR. MILES: NO. IT'S SIGNED BY THE CLERK OVER THE COURT. AND HER NAME, B. JASPER, EXECUTIVE OFFICER CLERK OF THE SUPERIOR COURT OF THE COUNTY OF LOS ANGELES, ATTESTED TO, AND IT'S KIND OF SMEARED, THE 23RD OF 2005.

THE COURT: DO YOU HAVE THE ORIGINAL CERTIFIED ONE OF THAT?

MR. MILES: I DO. THAT'S WHY I WANTED THE COURT TO EXAMINE THIS RECORD BECAUSE IT IS STAMPED WITH THEIR SEAL.

THE COURT: SO BASICALLY, THEY'RE JUST USING THE DOCKET.

MR. MILES: THEY USE A MINUTE ENTRY OR DOCKET ENTRY, CERTIFY THAT WITH THE SIGNATURE OF THE CLERK, AND THAT'S MY UNDERSTANDING OF CALIFORNIA PROCEDURE BASED ON THE RULE AND THE CASE WE CITED TO YOU ON PAGE 4 OF OUR BRIEF. THEY DON'T HAVE JUDGMENTS OF THE COURT AS WE UNDERSTAND JUDGMENTS TO BE. THEY ENTER JUDGMENTS IN THE MINUTES. IN ALL OTHER RESPECTS OTHER THAN THE SIGNATURE OF THE JUDGE --

THE COURT: MONICA, RETURN THIS BECAUSE IT'S A VERY IMPORTANT DOCUMENT.

MR. MILES: THIS -- THIS DOCUMENT, YOUR HONOR, THE STATE MAINTAINS COMPLIES WITH ALL THE OTHER REQUIREMENTS OF UTAH

LAW. IT IS WRITTEN, IT IS CLEAR, AND IT IS DEFINITE IN THAT IT STATES THE DEFENDANT WAS CONVICTED OF MANUFACTURING A CONTROLLED SUBSTANCE, A FELONY PUNISHABLE BY FIVE YEARS IN PRISON, AS INDICATED BY THE MINUTE ENTRY THAT HAS BEEN CERTIFIED BEFORE THE COURT. SO IN ALL OTHER RESPECTS, IT MATCHES WHAT THE REQUIREMENTS FOR UTAH ARE. AND OUR POSITION IS THAT UNDER THE FULL FAITH AND CREDIT CLAUSE, THIS COURT HAS TO GIVE THAT CALIFORNIA JUDGMENT THE WEIGHT IT WOULD BE GIVEN IN CALIFORNIA COURTS, WHICH WOULD THEN BE A WAY TO PROVE A PRIOR CONVICTION ON THE DEFENDANT'S BEHALF.

IF YOU HAVE OTHER QUESTIONS, I'LL BE HAPPY TO RESPOND.

THE COURT: THANK YOU. MR. GRAVIS.

MR. **GRAVIS:** WELL, YOUR HONOR, EVEN THE CALIFORNIA STATUTE MR. MILES CITES IN HIS MEMORANDUM SAYS, A COPY OF THE JUDGMENT OF CONVICTION SHALL BE FILED WITH THE PAPERS IN THE CASE. THAT'S WHAT THE CALIFORNIA LAW --

THE COURT: YOU DON'T THINK THAT SATISFIES THE CONVICTION CERTIFICATION?

MR. GRAVIS: NO, I DON'T BELIEVE -- THAT'S NOT A JUDGMENT OF CONVICTION. THAT'S A MINUTE ENTRY.

MR. MILES: WHAT IS A JUDGMENT OF CONVICTION IN CALIFORNIA, THIS IS WHAT WE'RE TOLD THEY DO. THEY DON'T HAVE JUDGES SIGN ORDERS LIKE WE DO IN CALIFORNIA. WE REQUESTED THAT SPECIFICALLY AND THEY SAID, WE DON'T DO THAT HERE. ALL WE DO IS THE CLERK OF THE COURT SIGNS IT AND FILES IT IN THE

FILE WITH THE MINUTE ENTRY. SO THEY SENT US A CERTIFIED COPY OF THAT BECAUSE THAT'S WHAT THEY DO IN CALIFORNIA.

THE COURT: WELL, THE STATUTE DOES SAY ONLY MUST BE ENTERED --

MR. MILES: BY A CLERK.

THE COURT: -- IN THE MINUTES, SO --

MR. GRAVIS: WELL, ACTUALLY, IT SAYS -- IT SAYS, WHEN A JUDGMENT UPON A CONVICTION IS RENDERED, THE CLERK OR IF THERE'S NO CLERK THE JUDGE MUST ENTER THE SAME IN THE MINUTES, STATING BRIEFLY THE OFFENSE FOR WHICH THE CONVICTION WAS HAD AND THE FACTS OF THE -- OF A PRIOR CONVICTION IF ANY. A COPY OF THE JUDGMENT OF CONVICTION SHALL BE FILED WITH THE PAPERS IN THE CASE. IT SAYS IT. THAT'S -- THAT'S OBVIOUSLY TALKING ABOUT TWO DIFFERENT DOCUMENTS. PLUS, THE MINUTE ENTRY DOESN'T SAY WHAT HE WAS CONVICTED OF.

MR. MILES: IT DOES. IT SAYS, MANUFACTURING CONTROLLED SUBSTANCE. DEFENDANT PLED GUILTY TO THAT. IT'S A FELONY --

MR. GRAVIS: (UNINTELLIGIBLE)

THE COURT: THERE WERE -- THERE WERE TWO CHARGES -- AND IT DOES, IT DOES SAY THAT, I READ IT. THERE WERE TWO CHARGES.

MR. MILES: HE PLED NOT GUILTY ORIGINALLY (UNINTELLIGIBLE) --

THE COURT: ONE OF THEM -- BUT I HAVE TO SAY, YOU HAVE TO LOOK CAREFULLY NO REALLY UNDERSTAND IT.

MR. MILES: CORRECT, COUNT 1 VACATED, SET ASIDE, NEW PLEA, GUILTY, ENTER CONVICTION, ACTUAL BASIS (UNINTELLIGIBLE) FIVE YEARS IN ANY STATE PRISON. AS TO COUNT 1, FORM OF PROBATION, ONE YEAR IN JAIL OR THREE YEARS ON PROBATION. DEFENDANT'S GETTING CREDIT FOR 96 DAYS IN CUSTODY, 64 DAYS ACTUAL. AND THEN IT GOES THROUGH ALL THE REQUIREMENTS OF THAT.

MR. GRAVIS: ONE OF THE CASES THE STATE CITES IN THEIR MEMORANDUM, STATE VERSUS HIGGENBOTHAM, THAT WAS A CERTIFIED TRUE COPY OF A WARRANT FOR ARREST, AND THE COURT SAID THAT WASN'T GOOD ENOUGH TO PROVE A PRIOR CONVICTION FOR FELONY, EVEN THOUGH IT WAS FOR A WARRANT FOR ARREST FOR A PROBATION VIOLATION ON ALLEGED PRIOR FELONY OUT OF STATE. STATE VERSUS ANDERSON, THE UTAH CASES HAS ALWAYS SAID, YOU NEED A COPY OF THE JUDGMENT AND CONVICTION.

MR. MILES: BUT THE --

MR. GRAVIS: -- CALIFORNIA SAYS THEY NEED TO FILE A COPY OF THE JUDGMENT AND CONVICTION SHALL BE FILED WITH THE PAPERS IN THE CASE. AND JUST BECAUSE THERE'S NOT ONE FILED DOESN'T MEAN THAT THEY CAN'T -- MR. MILES IS NOT AN AUTHORITY ON CALIFORNIA LAW, BUT THE STATUTE SPEAKS FOR ITSELF, AND AS FAR AS HIS OPINION AS TO WHETHER THIS IS WHAT CALIFORNIA REQUIRES OR NOT, HE'S NOT AN EXPERT (UNINTELLIGIBLE) --

MR. MILES: BUT MR. GRAVIS HAS CITED NOTHING THAT INDICATES THAT THIS IS INSUFFICIENT UNDER CALIFORNIA LAW.

THE STATE'S RESEARCH HAS SHOWN TO ITS BEST KNOWLEDGE THAT THIS IS SUFFICIENT. AND BASED ON THE DISCUSSIONS WE'VE HAD WITH THE CLERKS OF THIS COURT, THAT IS THEIR PRACTICE AND PROCEDURE THERE. A JUDGMENT OF CONVICTION THAT THEY REFERENCE IN THE STATUTE DOES NOT SO CLEARLY MEAN SOMETHING DIFFERENT BECAUSE THE COURT -- THE STATUTE TALKS ABOUT ENTERING THE SAME IN THE MINUTES. AND THAT MAY BE WHAT THEY CONSIDER A JUDGMENT OF CONVICTION. IT IS SIMPLY A PRONOUNCEMENT OF CONVICTION. IF THEY MAKE THAT PRONOUNCEMENT IN MINUTE ENTRIES, THAT'S CALIFORNIA'S PREROGATIVE. WE CAN'T DICTATE TO THEM HOW THEY SHOULD DO IT. THE STATE CITES THE UTAH CASES TO COMPARE AND SHOW IN UTAH, THIS IS WHAT WOULD BE REQUIRED, BUT WE HAVE SPECIFIC RULE ON POINT THAT REQUIRES A JUDGE TO SIGN A CONVICTION ENTERED BY A PLEA. THAT WASN'T COMPLIED WITH IN THOSE CASES, WHEREAS CALIFORNIA DOES NOT, AND SPECIFICALLY REQUIRES THE COURT CLERK TO DO IT UNLESS THERE IS NO COURT CLERK. THEY'RE EXACTLY OPPOSITE OF WHAT UTAH LAW WOULD BE. AND IN THIS CASE, A CLERK OF THE COURT ENTERED THOSE -- CONVICTION ON THE MINUTES AND THAT ENTRY IS CERTIFIED BY THAT CLERK OF THE COURT.

MR. GRAVIS: IT'S CERTIFIED BY A CLERK OF THE COURT. WE DON'T KNOW IF A CLERK OF THE COURT EVEN ENTERED IT ON THESE MINUTES.

MR. MILES: WELL --

THE COURT: WELL --

MR. GRAVIS: THAT'S STATE IS --

THE COURT: -- I -- I'M GOING TO TREAT THAT AS A SATISFACTION OF THE PRIOR CONVICTION REQUIREMENT BECAUSE IT HAS BEEN ENTERED IN THE MINUTES AND IT HAS BEEN CERTIFIED BY A CLERK OF THE COURT. SO I AM GOING TO ALLOW THAT. IT APPEARS TO ME THAT IS SUFFICIENT TO COMPLY WITH THE CALIFORNIA STATUTE, AND I WILL GIVE FULL FAITH AND CREDIT --

MR. GRAVIS: IS THE COURT FINDING THAT A CLERK OF THE COURT ENTERED THIS INTO THE MINUTES?

THE COURT: THAT CERTIFICATION ON THE BACK STATES THAT -- NO, NOT THAT THE CLERK ENTERED IT, THAT PARTICULAR CLERK ENTERED IT INTO THE MINUTES. IT DOES NOT --

MR. GRAVIS: (UNINTELLIGIBLE)

THE COURT: -- BUT I AM GOING TO ACCEPT THAT CLERK'S CERTIFICATION THAT IT WAS PROPERLY ENTERED IN, AND IT'S BY A CLERK.

MR. GRAVIS: BUT THAT DOESN'T -- IT SAYS IT'S A CERTIFIED TRUE COPY. IT DOESN'T SAY THAT THAT -- THAT WAS PREPARED BY A CLERK --

THE COURT: HOW -- HOW ELSE WOULD IT GET INTO THE --

MR. GRAVIS: THAT'S UP TO THE STATE --

THE COURT: -- OFFICIAL COURT MINUTES? THAT'S MY POINT --

MR. GRAVIS: THE STATE HAS TO PROVE EVERY ISSUE IN A CRIMINAL CASE BEYOND A REASONABLE DOUBT, AND THEY --

THE COURT: I UNDERSTAND.

MR. GRAVIS: -- THEY GOTTA PROVE THAT THIS WAS A PROPERLY PREPARED MINUTE ENTRY THEN. IF YOU'RE GONNA ALLOW THAT TO BE GOOD ENOUGH, THEY STILL HAVE TO PROVE THAT IT WAS -- IT WAS PREPARED BY A CLERK OF THE COURT.

THE COURT: WELL, YOU KNOW, I'M NOT SURE THAT'S WHERE YOU WANT TO GO WITH IT BECAUSE IF THEY DO THAT, THEY'RE GOING TO BE GETTING INTO THE FACT THAT SUBSEQUENT TO THIS CONVICTION, A JUDGE CONFIRMED THAT THERE HAD BEEN A CONVICTION IN THESE OTHER DOCUMENTS THAT HAVE BEEN FILED. AND IN THE EVENT THAT ISSUE GETS OPENED UP, I WOULD ALLOW THE STATE, IF THEY HAVE ADEQUATE BASIS TO BRING THAT IN, THEN, YOU KNOW, THEY COULD SHOW PROPER FOUNDATION FOR THAT, IT COULD COME IN. BUT THERE IS SOME STUFF THERE THAT CANNOT COME IN IF WE EVER GET INTO THAT --

MR. MILES: THAT'S CORRECT, THE PROBATION VIOLATION PROCEEDINGS THAT ARE ATTACHED TO THIS --

THE COURT: WELL, AND A LOT OF STUFF IN THERE WOULD NEVER BE ADMISSIBLE.

MR. MILES: WELL, AND THAT WOULD BE --

THE COURT: BUT THE CONFIRMATION BY A JUDGE ON RECORD, IF YOU CAN PROVE THAT'S WHAT THAT IS --

MR. MILES: WHICH IS ALSO CERTIFIED BY A CLERK.

THE COURT: -- MIGHT BE ADMISSIBLE, BUT -- SO, YOU KNOW, I DON'T KNOW WHERE YOU WANNA GO WITH IT. I'M JUST SAYING

THAT I AM OF THE OPINION THAT LEGALLY, THIS SATISFIES THE ENTRY BY THE CLERK IN THE MINUTES WITH A BRIEF STATEMENT OF THE OFFENSE FOR WHICH CONVICTION WAS HAD. AND IT HAS BEEN CERTIFIED AS THE OFFICIAL COURT RECORD WHICH I HAVE TO STATE IS DONE BY CLERKS. YOU KNOW, THAT'S THE ONLY WAY COURT RECORDS ARE NORMALLY MADE EXCEPT BY A CLERK OR A JUDGE.

MR GRAVIS: SO YOU'RE TAKING JUDICIAL NOTICE THAT THIS WAS PREPARED BY A CLERK.

THE COURT: YES -- WELL, NOT REALLY. I'M SAYING IT WAS ENTERED BY A CLERK OR IT WAS CERTIFIED BY A CLERK --

MR **GRAVIS:** CLERK --

THE COURT: -- AS THE OFFICIAL --

MR. GRAVIS: BUT YOU'RE -- BUT YOU'RE NOT MAKING ANY SPECIFIC FINDING THAT IT WAS ACTUALLY PREPARED --

THE COURT: I DON'T KNOW EXACTLY WHICH CLERK MIGHT HAVE PUT IT IN. IT'S ONLY CERTIFIED THAT IT WAS DONE IN THE OFFICIAL RECORD. AND I'M ASSUMING IT WAS DONE BY A CLERK OR A JUDGE.

MR. GRAVIS: OKAY. YOU'RE ASSUMING IT WAS DONE.

THE COURT: I AM, UH-HUH, BECAUSE SHE CERTIFIED THAT.

MR. GRAVIS: OKAY. WE'D ASK THE STATE TO PREPARE FINDINGS OF FACT AND CONCLUSIONS OF LAW.

THE COURT: OKAY. NOW, THIS CASE IS SET FOR TRIAL ON WHAT DATES?

MR **GRAVIS:** NOT SET.

MR. MILES: THIS PARTICULAR CASE HAS NOT BEEN SET FOR TRIAL AT THIS POINT, YOUR HONOR. THE CASE -- WE ARE CONFIRMED FOR TRIAL ON THE 17TH AND 18TH --

THE COURT: THE ONE WITH MR. HUTCHISON?

MR. MILES: THAT'S CORRECT.

THE COURT: DO YOU WANNA GET A DATE NOW?

MR. GRAVIS: YEAH.

THE CLERK: HOW MANY DAYS?

MR. MILES: ONE TO MAYBE TWO, TOPS.

THE COURT: HOW LONG DO YOU THINK, MR. GRAVIS?

MR. GRAVIS: PROBABLY TWO DAYS.

THE COURT: TWO DAYS.

THE CLERK: I CAN SET THE 19TH AND 20TH OF DECEMBER. OR THE 20TH AND 21ST.

THE COURT: 19TH AND 20TH OR 20TH AND 21ST.

MR. GRAVIS: 20TH AND 21ST.

MR. MILES: 20TH --

THE COURT: 20TH AND 21ST OF DECEMBER.

MR. MILES: FINE WITH THE STATE.

THE COURT: THAT'S A FIRST SET?

THE CLERK: FOR THE 20TH AND THE 21ST?

THE COURT: YES.

THE CLERK: YES.

MR. MILES: FINAL PRETRIAL CONFERENCE TO BE HELD WHEN, YOUR HONOR?

MR. GRAVIS: DECEMBER 4TH?

THE COURT: DECEMBER 4TH --

MR. MILES: THAT'S FINE FOR THE STATE.

THE COURT: -- FOR THE FINAL PRETRIAL CONFERENCE.

MR. GRAVIS: AND WHEN WILL YOU HAVE FINDINGS OF FACT, CONCLUSIONS OF LAW?

MR. MILES: I'LL TRY TO DO IT PROBABLY AFTER HIS TRIAL WITH MR. HUTCHISON.

MR. GRAVIS: OKAY. JUST AS LONG AS I HAVE THEM BEFORE THE 4TH OF DECEMBER.

MR. MILES: OH, YEAH, WELL BEFORE.

MR. GRAVIS: OKAY. THANK YOU, YOUR HONOR.

THE COURT: THANK YOU.

MR. GRAVIS: GO BACK TO NUMBER 11 --

THE COURT: NOW, BEFORE WE LEAVE MR. HERNANDEZ, SO YOU'RE ALL AWARE, I HAVE THIS ORDER THAT I'VE SIGNED FOR MR. HUTCHISON AWARDING THE THOUSAND DOLLARS TO DO THE WORK (UNINTELLIGIBLE).

MR. MILES: THAT'S FINE.

MR. HERNANDEZ: I APPRECIATE THAT.

THE COURT: I'VE SIGNED THAT SO IT'S ENTERED NOW INTO THE FILE.

MR. MILES: I'LL LET THE CIVIL DEPARTMENT HANDLE THAT. THAT WAS THEIR ISSUE.

THE COURT: WELL, JUST TELL THEM.

Addendum D

WEBER COUNTY

ATTORNEY'S OFFICE

2380 Washington Boulevard
Suite 230
Ogden, Utah 84401-1464
Telephone: (801) 399-8377
24 Hour FAX: (801) 399-8304

CERTIFIED

JUN 23 2005

Mailed

RECEIVED

JUN 23 2005

EAST DISTRICT

DATE: June 23, 2005

TO: LOS ANGELES COURT, ATTN: CERTIFICATION CLERK

FROM: WEBER COUNTY ATTORNEY'S OFFICE, OGDEN UTAH

OUR OFFICE IS IN NEED OF A CERTIFIED COPY OF PREVIOUS CONVICTION(S) ON THE FOLLOWING INDIVIDUAL IN ORDER TO FILE AN ENHANCED INFORMATION. THE COURT REQUIRES A CERTIFIED COPY OF THE **CONVICTION/SENTENCE** if available...

NAME:
HERNANDEZ, ANGEL JESUS

DOB:
04/18/1975

(1) **CASE NO.:** KA 038275-01
(2) **OFFENSE:** POSSESS CONTROLLED SUBSTANCE

PLEASE PROVIDE A CERTIFIED COPY OF THE JUDGEMENT AND CONVICTION, **SIGNED AND BY A JUDGE AND COURT CLERK (UNDER SEAL), BY *MAIL*** . TO THIS OFFICE, ATTENTION ANGIE. IF YOU HAVE ANY QUESTIONS PLEASE CALL ME AT 801-399-8674.

Thank you,

Angie Petersen
Secretary

****SECOND REQUEST: RECEIVED INFORMATION ON THE CO-DEFENDANT TYSON JEREMY DANGEIS. PLEASE SEND INFORMATION ON ANGEL HERNANDEZ****

THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED IS A FULL, TRUE, AND CORRECT COPY OF THE ORIGINAL ON FILE AND OF RECORD IN MY OFFICE.

ATTEST _____

Executive Officer / Clerk of the
Superior Court of California, County of
Los Angeles
By _____ Deputy

IN THE SUPERIOR COURT OF EAST DISTRICT JUDICIAL DISTRICT,
COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

A038275 PAGE NO. 1
EOPLE OF THE STATE OF CALIFORNIA VS. CURRENT DATE 06/23/05
DANT 01: ANGEL JESUS HERNANDEZ
NFORCEMENT AGENCY EFFECTING ARREST: LASD - WALNUT/SAN DIMAS STATIN

APPEARANCE DATE	AMOUNT OF BAIL	DATE POSTED	RECEIPT OR BOND NO.	SURETY COMPANY	REGISTER NUMBER

FILED ON 11/21/97.
MATION FILED ON 12/05/97.
SE(S):
UNT 01: 11379.6(A) H&S FEL - MANUFACTURE CONTROLED SUBSTNCE.
UNT 02: 11377(A) H&S FEL - POSSESS CONTROLLED SUBSTANCE.
TTED ON OR ABOUT 11/04/97 IN THE COUNTY OF LOS ANGELES
SCHEDULED EVENT:
05/97 830 AM ARRAIGNMENT DIST EAST DISTRICT DEPT EAE

/02/97 AT 600 PM :
LIM TRANSCRIPT FILED SJ

/05/97 AT 830 AM IN EAST DISTRICT DEPT EAE

E CALLED FOR ARRAIGNMENT
ES: DANIEL LOPEZ (JUDGE) SHIRLEY JETT (CLERK)
JOYCE MALLETT (REP) MARGARET MOE (DA)
C DEFENDER APPOINTED. JEFFREY ZIMEL - P.D.
DANT IS PRESENT IN COURT, AND REPRESENTED BY JEFFREY ZIMEL DEPUTY PUBLIC
ENDER
FORMATION FILED AND THE DEFENDANT IS ARRAIGNED.
DANT WAIVES FURTHER ARRAIGNMENT.
DANT PLEADS NOT GUILTY TO COUNT 01, 11379.6(A) H&S - MANUFACTURE CONTROLED
BSTNCE.
DANT PLEADS NOT GUILTY TO COUNT 02, 11377(A) H&S - POSSESS CONTROLLED
STANCE.
RT ORDERS AND FINDINGS:
E COURT, WITH THE CONSENT OF THE DEFENDANT AND ALL COUNSEL,

EFERS THE MATTER TO THE PROBATION DEPARTMENT FOR A PRE-PLEA
EPORT PURSUANT TO CODE OF CIVIL PROCEDURE 131.3.
E COURT ORDERS THE DEFENDANT TO APPEAR ON THE NEXT COURT DATE.
ENDANT DENIES ALLEGATIONS.
SCHEDULED EVENT:
MOTION OF COURT
/98 830 AM PRETRIAL CONFERENCE DIST EAST DISTRICT DEPT EAE
SCHEDULED EVENT 2:
MOTION OF COURT
02/98 830 AM JURY TRIAL DIST EAST DISTRICT DEPT EAE

DY STATUS: DEFENDANT REMANDED

/06/98 AT 830 AM IN EAST DISTRICT DEPT EAE

E CALLED FOR PRETRIAL CONFERENCE
ES: DANIEL LOPEZ (JUDGE) SHIRLEY JETT (CLERK)
JOYCE MALLETT (REP) MARGARET MOE (DA)

_NDANT IS PRESENT IN COURT, AND REPRESENTED BY JEFFREY ZIMEL DEPUTY PUBLIC
EFENDER
ENDANT ADVISED OF AND PERSONALLY AND EXPLICITLY WAIVES THE FOLLOWING RIGHTS:
WRITTEN ADVISEMENT OF RIGHTS AND WAIVERS FILED, INCORPORATED BY REFERENCE
EIN
AL BY COURT AND TRIAL BY JURY
CONFRONTATION AND CROSS-EXAMINATION OF WITNESSES;
SUBPOENA OF WITNESSES INTO COURT TO TESTIFY IN YOUR DEFENSE;
AGAINST SELF-INCRIMINATION;
ENDANT ADVISED OF THE FOLLOWING:
E NATURE OF THE CHARGES AGAINST HIM, THE ELEMENT OF THE OFFENSE IN THE
ORMATION AND POSSIBLE DEFENSES TO SUCH CHARGES;
E POSSIBLE CONSEQUENCES OF A PLEA OF GUILTY OR NOLO CONTENDERE, INCLUDING
THE MAXIMUM PENALTY AND ADMINISTRATIVE SANCTIONS AND THE POSSIBLE LEGAL
EFFECTS AND MAXIMUM PENALTIES INCIDENT TO SUBSEQUENT CONVICTIONS FOR THE
SAME OR SIMILAR OFFENSES;
E EFFECTS OF PROBATION;
YOU ARE NOT A CITIZEN, YOU ARE HEREBY ADVISED THAT A CONVICTION OF THE

OFFENSE FOR WHICH YOU HAVE BEEN CHARGED WILL HAVE THE CONSEQUENCES OF
DEPORTATION, EXCLUSION FROM ADMISSION TO THE UNITED STATES, OR DENIAL OF
NATURALIZATION PURSUANT TO THE LAWS OF THE UNITED STATES;
COURT FINDS THAT EACH SUCH WAIVER IS KNOWINGLY, UNDERSTANDINGLY, AND
XPLICITLY MADE; COUNSEL JOINS IN THE WAIVERS
N MOTION OF DEFENDANT, PLEA TO COUNT 01 VACATED AND SET ASIDE, AND NEW AND
IFFERENT PLEA OF GUILTY ENTERED.
NT (01) : DISPOSITION: CONVICTED
RT FINDS THAT THERE IS A FACTUAL BASIS FOR DEFENDANT'S PLEA, AND COURT
CEPTS PLEA.
RIAL DATE OF 2-2-98 ADVANCED AND VACATED.
URT CONSIDERS THE PRE-PLEA REPORT.
ES TIME FOR SENTENCE.
T SCHEDULED EVENT:
ENTENCING
TO COUNT (01):
ERVE 5 YEARS IN ANY STATE PRISON
OURT SELECTS THE MID TERM OF 5 YEARS AS TO COUNT 01.
CUTION OF SENTENCE SUSPENDED
ENDANT PLACED ON FORMAL PROBATION
OR A PERIOD OF 003 YEARS UNDER THE FOLLOWING TERMS AND CONDITIONS:

ERVE 365 DAYS IN LOS ANGELES COUNTY JAIL
DEFENDANT GIVEN TOTAL CREDIT FOR 96 DAYS IN CUSTODY 64 DAYS ACTUAL CUSTODY
AND 32 DAYS GOOD TIME/WORK TIME
N ADDITION:
THE DEFENDANT IS TO PAY A RESTITUTION FINE PURSUANT TO SECTION
1202.4(B) PENAL CODE IN THE AMOUNT OF $200.00
INCREMENT (11372.5 H&S, LAB ANALYSIS) $ 50.00
NOT USE OR POSSESS ANY NARCOTICS, DANGEROUS OR RESTRICTED DRUGS
OR ASSOCIATED PARAPHERNALIA, EXCEPT WITH VALID PRESCRIPTION, AND
STAY AWAY FROM PLACES WHERE USERS, BUYERS OR SELLERS CONGREGATE,
EXCEPT IN AN AUTHORIZED DRUG COUNSELING PROGRAM.
NOT ASSOCIATE WITH PERSONS KNOWN BY YOU TO BE NARCOTIC OR DRUG
USERS OR SELLERS.
SUBMIT TO PERIODIC ANTI-NARCOTIC TESTS AS DIRECTED BY THE
PROBATION OFFICER.

IT ASSOCIATE WITH CO-DEFENDANT(S) TYSON J DANGLEIS
IOPERATE WITH THE PROBATION OFFICER IN A PLAN FOR DRUG
COUNSELING AND REHABILATATION
IPPORT DEPENDENTS AS DIRECTED BY THE PROBATION OFFICER.
EK AND MAINTAIN TRAINING, SCHOOLING OR EMPLOYMENT AS APPROVED
Y THE PROBATION OFFICER.
.INTAIN RESIDENCE AS APPROVED BY THE PROBATION OFFICER.
'T OWN, USE OR POSSESS ANY DANGEROUS OR DEADLY WEAPONS,
NCLUDING ANY FIREARMS, KNIVES OR OTHER CONCEALABLE WEAPONS.

BMIT PERSON AND PROPERTY TO SEARCH OR SEIZURE AT ANY TIME OF
HE DAY OR NIGHT BY ANY LAW ENFORCEMENT OFFICER OR BY PROBATION
FFICER WITH OR WITHOUT A WARRANT.
EY ALL LAWS AND ORDERS OF THE COURT.
EY ALL RULES AND REGULATIONS OF THE PROBATION DEPARTMENT.
E ONLY TRUE NAME WITH GOVERNMENT AND POLICE OFFICIALS, WHICH
S ANGEL JESUS HERNANDEZ
RT ORDERS AND FINDINGS:

FENDANT TO REPORT TO THE PROBATION OFFICER WITHIN 48 HOURS
FTER RELEASE FROM CUSTODY.
Y THE COSTS OF PROBATION SERVICES (PURSUANT TO 1203.1B PC) TO
HE PROBATION OFFICER IN THE AMOUNT THE PROBATION OFFICER SHALL
RESCRIBE.

FENDANT ORDERED TO REPORT TO FINANCIAL EVALUATOR WITHIN 5
DAYS OF RELEASE FROM CUSTODY
GISTER AS NARCOTIC OFFENDER WITH LOCAL POLICE DEPARTMENT OR
HERIFF'S DEPARTMENT.
FENDANT ACKNOWLEDGES TO THE COURT THAT THE DEFENDANT
NDERSTANDS AND ACCEPTS ALL THE PROBATION CONDITIONS, AND
EFENDANT AGREES TO ABIDE BY SAME.
(01): DISPOSITION: CONVICTED
NING COUNTS DISMISSED:
UNT (02): DISMISSED DUE TO PLEA NEGOTIATION
ACT ISSUED ON 01/06/98 FOR COUNT 01
UDGMENT CODE JG
SCHEDULED EVENT:
BATION IN EFFECT/REMANDED

IDY STATUS: DEFENDANT REMANDED

/10/98 AT 830 AM :
SUANT TO REQUEST FROM PROBATION DEPARTMENT, MATTER IS SET ON
ENDAR FOR 010499 AT 8:30AM IN DEPARTMENT EAE. HEARING ON
)LATION.
SCHEDULED EVENT:
04/99 830 AM POSSIBLE VIOL. OF PROBATION DIST EAST DISTRICT DEPT EAE

./04/99 AT 830 AM IN EAST DISTRICT DEPT EAE

)E CALLED FOR POSSIBLE VIOL. OF PROBATION
ES: THEODORE D. PIATT (JUDGE) BLANCA AZPEITIA (CLERK)
SHARON FOX (REP) CONSTANCE E. BUGH (DA)
)DANT IS PRESENT IN COURT, AND REPRESENTED BY M.R. COGHLAN DEPUTY PUBLIC
'ENDER
)BATION REVOKED
) COUNT (01):

EFENDANT NOT IN COURT. PROBATION REVOKED. BENCH WARRANT IS
SSUED. NO BAIL. LATER: DEFENDANT APPEARS IN COURT. DEFEN-
ANT REMANDED. NO BAIL. BENCH WARRANT PREVIOUSLY ISSUED IS
UASHED AND RECALLED.

ATTER SET FOR VIOLATION HEARING. PEOPLE WILL SUBPENA PROBATION
FFICER INTO COURT FOR 1-21-99.
L SET AT NO BAIL.
ABSTRACT NOT REQUIRED
T SCHEDULED EVENT:
1/21/99 830 AM PROBATION VIOLATION HEARING DIST EAST DISTRICT DEPT EAE

TODY STATUS: REMANDED TO CUSTODY

)1/21/99 AT 830 AM IN EAST DISTRICT DEPT EAE

\SE CALLED FOR PROBATION VIOLATION HEARING

TIES: DAVID S. MILTON (JUDGE) BLANCA AZPEITIA (CLERK)
SHARON FOX (REP) CONSTANCE E. BUGH (DA)
ENDANT IS PRESENT IN COURT, AND REPRESENTED BY M.R. COGHLAN DEPUTY PUBLIC
EFENDER
\TTER RESET FOR VIOLATION HEARING TO 2-18-99.

EOPLE TO RESUBPENA PROBATION OFFICER INTO COURT FOR 2-18-99.
T SCHEDULED EVENT:
2/18/99 830 AM PROBATION VIOLATION HEARING DIST EAST DISTRICT DEPT EAE

TODY STATUS: DEFENDANT REMANDED

)2/18/99 AT 830 AM IN EAST DISTRICT DEPT EAE

\SE CALLED FOR PROBATION VIOLATION HEARING
TIES: DAVID S. MILTON (JUDGE) BLANCA AZPEITIA (CLERK)
SHARON FOX (REP) ABRAM WEISBROT (DDA)
DEFENDANT IS PRESENT(IN LOCK UP) AND REPRESENTED BY M.R. COGHLAN DEPUTY
)BLIC DEFENDER
LINK STANDS IN FOR M. COGHLAN. MATTER CONTINUED AS INDICATED

EOPLE TO HAVE WITNESSES HERE ON 3-4-99.
SCHEDULED EVENT:
)N MOTION OF COURT
3/04/99 830 AM PROBATION VIOLATION HEARING DIST EAST DISTRICT DEPT EAE

TODY STATUS: DEFENDANT REMANDED

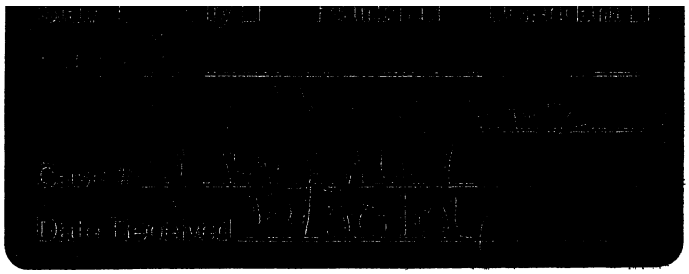
)3/04/99 AT 830 AM IN EAST DISTRICT DEPT EAE

\SE CALLED FOR PROBATION VIOLATION HEARING
TIES: DAVID S. MILTON (JUDGE) BLANCA AZPEITIA (CLERK)
SHARON FOX (REP) RICHARD CEBALLOS (DA)
ENDANT IS PRESENT IN COURT, AND REPRESENTED BY M.R. COGHLAN DEPUTY PUBLIC
EFENDER
T FINDS DEFENDANT IN VIOLATION OF PROBATION.
OBATION REVOKED
ATION REINSTATED.

BATION IS CONTINUED ON SAME TERMS AND CONDITIONS.
COUNT (01):
BATION OFFICER DARILYN FARRIS AND DEFENDANT ARE SWORN AND ARE
TIFY. DEFENDANT IS ORDERED TO SERVE 365 DAYS IN COUNTY JAIL.
ENDANT RECEIVES 0 CREDITS.

RT ORDERS NO EARLY RELEASE FROM COUNTY JAIL.
BSTRACT NOT REQUIRED
SCHEDULED EVENT:
BATION IN EFFECT/REMANDED

DY STATUS: ON PROBATION.



THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED IS A FULL, TRUE, AND CORRECT COPY OF THE ORIGINAL ON FILE AND OF RECORD IN MY OFFICE.

ATTEST [illegible] 2 3 2005

Executive Officer / Clerk of the Superior Court of California, County of Los Angeles

By _____, Deputy

V. JASPER